



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
ANNA BERGGREN, ET AL. : EXAMINER: PRATT
SERIAL NO: 09/926,586 :
FILED: NOVEMBER 21, 2001 : GROUP ART UNIT: 1761
FOR: NEW COMPOSITION :

REPLY BRIEF

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on the
12-29-05
COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This is in reply to the Examiner's answer mailed September 13, 2005.

There are two fundamental points that the Office has failed to recognize that distinguish the claimed invention from the cited prior art:

- (1) the cited prior art fails to provide any disclosure or suggestion for the selection of viable lactobacilli having a positive effect on human intestinal mucosa; and
- (2) the cited prior art fails to describe or suggest a sports drink as claimed.

The Examiner does not understand the expression "viable lactobacilli having a positive effect on human intestinal mucosa" and interprets this expression to include many of the known lactobacilli. The Examiner states that claims 15, 25, 36, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connolly and in view of Kurppa because "Connolly discloses that it is known as in claim 15 to use probiotic bacteria to enhance metabolic processing from the gastrointestinal tract using acidophilus bacteria or other lactic producing bacteria (abstract)" (page 7 of the Examiner's answer).